



# BERWICK BANK WIND FARM ONSHORE ENVIRONMENTAL IMPACT ASSESSMENT REPORT

Chapter 3: Policy and Legislation

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## **ACRONYMS AND ABBREVIATIONS**

Acronym / Abbreviation	Definition
EIA	Environmental Impact Assessment
EIA Report	Environmental Impact Assessment Report
ELC	East Lothian Council
HEPS	Historic Environment Policy for Scotland
LDP	Local Development Plan
NTS	Non-Technical Summary
NPF	National Planning Framework
PAC	Pre-application Consultation
RSS	Regional Spatial Strategy
PAN	Planning Advice Note
SESplan	The Edinburgh and South East Scotland Plan Strategic Development Plan

## **GLOSSARY**

Term	Definition
Planning Application Boundary	The Proposed Development site boundary which will encompass the boundary of the land to be developed.
Proposed Development	The proposed Onshore Transmission Works (OnTW) required to enable the grid connection for the Berwick Bank Wind Farm

## 3 POLICY & LEGISLATION

#### 3.1 INTRODUCTION

This chapter provides an overview of the planning policy and legislative context for the Proposed Development. The EIA legislative context for the Proposed Development which this EIA complies with, is outlined within Volume 1, Chapter 2. The consenting approach of the Proposed Development is outlined within Volume 1, Chapter 1. The Planning Statement which is submitted in support of the planning application includes a detailed discussion and evaluation of the relevant planning considerations including relevant policies and their application to the Proposed Development. References to legislation within this chapter are to that legislation as amended.

#### 3.1.1 The Town and Country Planning (Scotland) Act 1997 (As Amended)

- 2. Section 25(1) of the Town and Country Planning (Scotland) Act 1997 (as amended by the Town and Country Planning (Scotland) Act 2019) (Scottish Government, 2019), states: "Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination is, unless material considerations indicate otherwise,
  - (a) to be made in accordance with that plan; and
  - (b) if the development in question is a national development, to be made in accordance with any statement under section 3A(5) which—
    - (i) relates to that national development,
    - (ii) is expressed as applying for the purposes of development management, and
    - (iii) is to the effect that the development in question (or a development such as the development in question) could and should occur."
- 3. In the case of the Proposed Development, the development plan, the parameters of which are defined by Section 24 of the Town and Country Planning (Scotland) Act 1997 (as amended by the Town and Country Planning (Scotland) Act 2019), comprises:
  - National Planning Framework (NPF) 4 (Scottish Government, 2023a); and
  - East Lothian Council Local Development Plan 2018 (East Lothian Council, 2018) (hereafter "the LDP") and associated Supplementary Guidance.
- 4. This chapter outlines the statutory development plan as stated in Paragraph 3 and other planning policy-based material considerations relevant to the Proposed Development which includes:
  - Emerging development plan policy, specifically:
    - Interim Regional Spatial Strategy.
  - Planning Advice Notes (PAN); and
  - Historic Environment Policy Statement for Scotland 2019.
- 5. UK and Scottish energy policy is also a material consideration. Such policies, including those listed below, are not detailed within this Chapter, but are considered within the accompanying Planning Statement:
  - The Climate Change (Scotland) Act 2009;
  - The Climate Change (Emissions Reduction Targets) (Scotland) Act 2019;
  - Climate Emergency National & Local;
  - 2020 Routemap for Renewable Energy in Scotland;
  - The Scottish Energy Strategy: The Future of Energy in Scotland;

- Electricity Generation Policy Statement 2013;
- The Offshore Wind Energy Policy Statement (OWEPS) (Scottish Government, 2020c)
- Offshore Wind Sector Deal 2019;
- Low Carbon Scotland: Climate Change Plan Third Report on Proposals and Policies 2018-2032;
- Protecting Scotland's Future: The Scottish Government's Programme for Scotland 2019-20:
- Reducing emissions in Scotland 2020 Progress Report to Scottish Parliament;
- Update to the CCP Securing a Green Recovery on a Path to Net Zero;
- Scottish National Marine Plan (2015);
- The Marine (Scotland) Act 2010 and the Regional Marine Plan;
- Sectoral Marine Plan for Offshore Wind Energy;
- The Climate Change Act 2008;
- The Energy Act 2013;
- UK Offshore Wind Sector Deal; and
- UK Marine Policy Statement.

#### 3.2 DEVELOPMENT PLAN POLICY

#### 3.2.1 National Planning Framework 4

6. NPF4 sets out a long-term plan for Scotland that sets out where development and infrastructure is needed, and was adopted on 13 February 2023, at which point it became part of the development plan.

#### NPF4's National Development 3

- 7. In terms of the scope of the designation NPF4's national development number 3 is broadly consistent with NPF3's national development number 4 as it relates to electricity transmission infrastructure on a Scotland-wide basis. Part (b) considers: "New and/or replacement upgraded on and offshore high voltage electricity transmission lines, cables and interconnectors of 132kv or more"; whilst part (c) considers: "New and/or upgraded Infrastructure directly supporting on and offshore high voltage electricity lines, cables and interconnectors including converter stations, switching stations and substations."
- 8. Accompanying text at page 103 states:
  - "A large and rapid increase in electricity generation from renewable sources will be essential for Scotland to meet its net zero emissions targets."
  - "The electricity transmission grid will need substantial reinforcement including the addition
    of new infrastructure to connect and transmit the output from new on and offshore capacity
    to consumers in Scotland, the rest of the UK and beyond. Delivery of this national
    development will be informed by market, policy and regulatory developments and
    decisions."
  - In terms of need: "Additional electricity generation from renewables and electricity transmission capacity of scale is fundamental to achieving a net zero economy and supports improved network resilience in rural and island areas."

#### Policy 11

9. Policy intent: "To encourage, promote and facilitate all forms of renewable energy development onshore and offshore. This includes energy generation, storage, new and replacement transmission and distribution infrastructure and emerging low-carbon and zero emissions technologies including hydrogen and carbon capture utilisation and storage (CCUS)."

- 10. Part (a)(ii) states: "Development proposals for all forms of renewable, low-carbon and zero emissions technologies will be supported. These include... enabling works, such as grid transmission and distribution infrastructure..."
- 11. Part (c) continues: "Development proposals will only be supported where they maximise net economic impact, including local and community socio-economic benefits such as employment, associated business and supply chain opportunities."
- 12. Part (e) further states: "In addition, project design and mitigation will demonstrate how the following impacts are addressed:
  - impacts on communities and individual dwellings, including, residential amenity, visual impact, noise and shadow flicker;
  - significant landscape and visual impacts, recognising that such impacts are to be expected
    for some forms of renewable energy. Where impacts are localised and/ or appropriate
    design mitigation has been applied, they will generally be considered to be acceptable;
  - public access, including impact on long distance walking and cycling routes and scenic routes:
  - impacts on aviation and defence interests including seismological recording;
  - impacts on telecommunications and broadcasting installations, particularly ensuring that transmission links are not compromised;
  - impacts on road traffic and on adjacent trunk roads, including during construction;
  - impacts on historic environment;
  - effects on hydrology, the water environment and flood risk;
  - biodiversity including impacts on birds;
  - impacts on trees, woods and forests;
  - proposals for the decommissioning of developments, including ancillary infrastructure, and site restoration;
  - the quality of site restoration plans including the measures in place to safeguard or guarantee availability of finances to effectively implement those plans; and
  - cumulative impacts."
- 13. NPF4 incorporates Scottish planning policy, relevant parts of which are summarised on a topic-by-topic basis in Table 3.1.

Table 3.1: NPF4 Policies

Topic	Relevant EIAR Chapter	Relevant Parts of NPF4
Landscape and visual	Chapter 6: Landscape & Visual	Policies 4, 6 and 29
Ecology and ornithology	Chapters 7: Ecology and 8: Ornithology	Policies 3 and 4
Noise	Chapter 9: Noise	Policy 23
Air quality	Scoped out of EIA process	Policy 23
Cultural heritage	Chapter 10: Cultural Heritage	Policy 7
Geology, hydrology, soil and flood risk	Chapter 11: Geology, hydrology, soils and flood risk	Policy 22
Traffic and transport	Chapter 12: Traffic and Transport	Policy 13

Topic	Relevant EIAR Chapter	Relevant Parts of NPF4
Land use, tourism and recreation	Chapter 14: Land use, tourism and recreation	Policy 30

#### 3.2.2 Local Development Plan

- 14. The East Lothian Local Development Plan (the LDP) policy can be considered in three parts:
  - 1. site specific policies;
  - 2. policies relevant given the nature of the Proposed Development; and
  - 3. general LDP policies.
- 15. Where possible (i.e. where not relating to environmental matters which are the subject of ongoing EIA) this Statement considers 1 and 2, above, while 3 will be assessed in the Planning Statement and Environmental Impact Assessment Report which will accompany the forthcoming planning application.
  - Site Specific Policies
- 16. The Planning Application Boundary includes areas covered by the policy designations referenced within Table 3.2.

**Table 3.2: Policy Designations** 

Designation	LDP Policy ref	Summary of LDP Policy	Relevant Environmental Topic, Chapter, or Document
OI2 (Map 3 – Landscape and Infrastructure)	Policy OI2: Torness Consultation Zone	Office for Nuclear Regulation to be consulted on planning application	Planning Statement
Torness Power Station	PROP EGT2: Torness Power Station	Safeguards site for power generation and supports decommissioning if during LDP period	Planning Statement, Site Selection (Volume 1, Chapter 4)
Mineral Safeguard (Inset Map 41 – Skateraw Sand & Gravel Oxwell Mains Limestone Quarry)	PROP MIN3: Safeguard Longyester and Skateraw Sand and Gravel Quarries	Area safeguarded for further mineral extraction	Planning Statement
DC1 (Map 3 – Landscape and Infrastructure)	DC1: Rural Diversification	Criteria for development in open countryside	Ecology (Volume 1, Chapter 7); Ornithology Ecology (Volume 1, Chapter 8); Landscape and Visual Ecology (Volume 1, Chapter 6); Land use, Tourism and Recreation (Volume 1, Chapter 14)

Designation	LDP Policy ref	Summary of LDP Policy	Relevant Environmental Topic, Chapter, or Document
DC6 Constrained (Lowland Plains) (Map 4 – Coastal Categorisation and Special Landscape Areas)	DC6: Development in the Coastal Area	Criteria for development in constrained coast –	Planning Statement
SSSI (Refer to Policy NH2) (Map 1: International and National Natural Heritage Designations)			Geology, Hydrology, Soils and Flood Risk (Volume 1, Chapter 11)
Geological Conservation Review Sites (Refer to Policy NH2) (Map 1: International and National Natural Heritage Designations)	Policy NH2: Protection of SSSIs and Geological Conservation Review Sites	Criteria for acceptable development within such areas	Geology, Hydrology, Soils and Flood Risk (Volume 1, Chapter 11)
Local Biodiversity Sites NH3) (Map 2 – Local Nature Conservation Sites, Nature Reserves and Country Parks	Policy NH3: Protection of Local Sites and Areas	Criteria for development affecting such areas	Ecology (Volume 1, Chapter 7); Ornithology (Volume 1, Chapter 8); Planning Statement

17. The Planning Application Boundary has been refined through design and site selection work. The relevant site-specific policies are considered within the Planning Statement which accompanies the planning application and form part of the detailed assessment within the relevant EIA Report technical chapter.

Policies relevant given the nature of proposed development

- 18. In addition to relevant site-specific policies, the LDP policy below is specific to the character of the Proposed Development:
  - Policy EGT4: Enhanced High Voltage Electricity Transmission Network.
- 19. Policy EGT4 outlines ELC support for development within the scope of NPF4's national development number 3, subject to acceptable impacts on:
  - landscape;
  - visual amenity;
  - communities;
  - natural heritage; and
  - cultural heritage.
- 20. Policy EGT4 also references Strategy Diagram 3, which illustrates the area of co-ordinated action and identifies "potential electricity grid connection" nearby Torness, as well as the Branxton sealing end compound within the area of co-ordinated action.

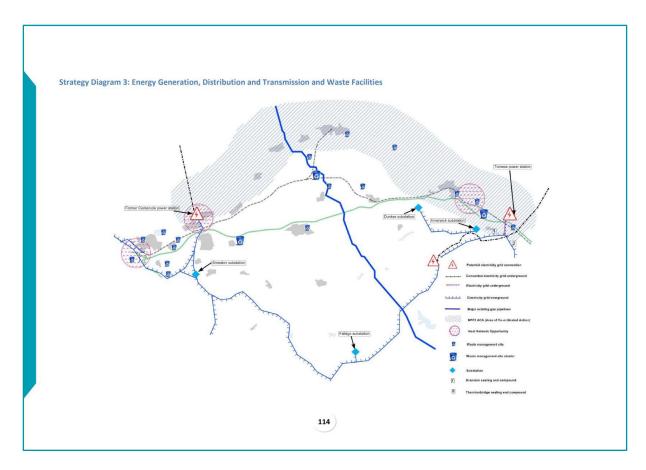


Figure 3.1: Strategy Diagram 3

#### **General LDP Policies**

21. Of the LDP policies which are theoretically relevant to all planning applications, those referenced in Table 3.2 are relevant, or potentially could be relevant, to the consideration of the Proposed Development.

**Table 3.2: Relevant LDP Policies** 

LDP Policy Reference	Summary of LDP Policy	Relevant Environmental Topic, Chapter or Document
T1: Development Location and Accessibility	Adequate access to sites required	Traffic and Transport (Volume 1, Chapter 12)
T2: General Transport Impact	Requirements for new development to ensure no significant adverse impacts from a range of traffic, transport, access-related perspectives	Traffic and Transport (Volume 1, Chapter 12)
T4: Active Travel Routes and Core Paths as part of the Green Network Strategy	Policy protection for core paths	Land Use, Tourism & Recreation (Volume 1, Chapter 14)

LDP Policy Reference	Summary of LDP Policy	Relevant Environmental Topic, Chapter or Document
Policy W4: Construction Waste	Requires construction Site Waste Management Plan in support of planning applications	An Outline Site Waste Management Plan is with the EIAR (Volume 4, Appendix 5.1). Should planning permission be granted this will be updated post consent and after the appointment of the Principal Contractor
Policy MIN1: Protection of Mineral Reserves	Resists permanent development which would sterilise minerals reserves	The Proposed Development location is detailed in Analysis of Alternatives (Volume 1, Chapter 4).
Policy DC9: Special Landscape Areas	Discourages development which would negatively impact such areas, with potentially relevant caveats	Landscape and Visual (Volume 1, Chapter 6)
Policy NH1: Protection of Internationally Designated Sites	Policy protection for internationally designated sites	Ecology (Volume 1, Chapter 7); Ornithology (Volume 1, Chapter 8), Standalone Report to Inform Appropriate Assessment
Policy NH4: European Protected Species	Policy protection for EPS	Ecology (Volume 1, Chapter 7); Ornithology (Volume 1, Chapter 8)
Policy NH5: Biodiversity and Geodiversity Interests, including Nationally Protected Species	Policy protection for biodiversity and geodiversity interests including nationally protected species	Ecology (Volume 1, Chapter 7); Ornithology (Volume 1, Chapter 8); Geology, Hydrology, Soils and Flood Risk (Volume 1, Chapter 11)
Policy NH6: Geodiversity Recording and Alternative Exposures	Recording of geological features which cannot be preserved	Geology, Hydrology, Soils and Flood Risk (Volume 1, Chapter 11)
Policy NH7: Protecting Soils	Policy protection for prime agricultural land or rare/carbon rich soils	Geology, Hydrology, Soils and Flood Risk (Volume 1, Chapter 11); Land use, Tourism and Recreation (Volume 1, Chapter 14)
Policy NH8: Trees and Development	Policy protection for trees	Ecology (Volume 1, Chapter 7); Ornithology (Volume 1, Chapter 8); Landscape and visual (Volume 1, Chapter 6)
Policy NH9: Water Environment	Policy protection to the water environment and promotion of enhancements	Geology, Hydrology, Soils and Flood Risk (Volume 1, Chapter 11)
Policy NH10: Sustainable Urban Drainage Systems	Promotion of Sustainable Urban Drainage System (SUDS)	Geology, Hydrology, Soils and Flood Risk (Volume 1, Chapter 11)

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LDP Policy Reference	Summary of LDP Policy	Relevant Environmental Topic, Chapter or Document
Policy NH11: Flood Risk	Policy in respect of flood risk	Geology, Hydrology, Soils and Flood Risk (Volume 1, Chapter 11)
Policy NH12: Air Quality	Policy protection for air quality	Planning Statement; Approach to EIA (Volume 1, Chapter 2), Outline Construction Environment Management Plan (Volume 4, Appendix 5.1)
Policy NH13: Noise	Policy protection against noise	Noise (Volume 1, Chapter 9)
Policy CH1: Listed Buildings	Policy protection for the setting of a listed building	Cultural Heritage (Volume 1, Chapter 10)
Policy CH2: Development Affecting Conservation Areas	Policy protection conservation areas or its setting	Cultural Heritage (Volume 1, Chapter 10)
Policy CH4: Scheduled Monuments and Archaeological Sites	Policy protection for Scheduled Monument or Archaeological Site	Cultural Heritage (Volume 1, Chapter 10); Proposed Development Description (Volume 1, Chapter 5)
Policy CH5: Battlefields	Policy protection for Battlefield site	Cultural Heritage (Volume 1, Chapter 10)
Policy CH6: Gardens and Designed Landscapes	Policy protection for Gardens or Designed Landscapes	Cultural Heritage (Volume 1, Chapter 10); Landscape and Visual (Volume 1, Chapter 6)
Policy DP1: Landscape Character	Policy protection for landscape character	Landscape and Visual (Volume 1, Chapter 6)
Policy DP2: Design	Required design standards for all new development	Proposed Development Description (Volume 1, Chapter 5); All technical chapters (Volume 1, Chapters 6-14)

<sup>22.</sup> Relevant policies will inform the assessment of the Proposed Development within the relevant EIA Report technical chapter.

#### 3.3 OTHER POLICY-BASED MATERIAL CONSIDERATIONS

#### 3.3.1 Planning-based material considerations

Regional Spatial Strategy

23. Regional Spatial Strategies (RSS) are required for planning authorities acting jointly and the intention is that they will contribute to the preparation, revision or amendment of the NPF. They help inform NPF for national planning opportunities across the regions.

- 24. An interim RSS relevant to the south of Scotland was considered by the SESplan Joint Committee on 21 September 2020. Following ratification of the Joint Committee's decision by each of the SESplan member authorities, the interim RSS was submitted to Scottish Government who are currently considering the document.
- 25. The Strategy outlines that "National and regional strategy must support investments to deliver net zero emissions through.... energy generation and storage" and "Existing renewable energy across the region can be enhanced by a wide range of as yet unused opportunities including sea water along the Forth Estuary and North Sea coast, mine water across much of the region, solar, and further offshore wind energy. These should be promoted and linked in with future investment and development... The development of offshore wind energy is supported however, careful consideration needs to be given to addressing the requirements for land-based infrastructure to support offshore wind energy".
- 26. The RSS is relevant to Proposed Development and therefore appropriate weight should be applied to it as a material consideration.

#### LDP 2

27. The next LDP for East Lothian (LDP2) is in the early stages of preparation which involves information gathering, research, and engaging with stakeholders. The content of an emerging plan can be a material consideration, however given the prematurity of the proposed plan at the time of application submission it is not considered to carry significant weight.

#### 3.3.2 Planning Advice Notes (PAN)

28. Relevant PAN are summarised in Table 3.3 and are documented in respect of relevant environmental topics. Technical assessment of those environmental topics which are "scoped-in" to the EIA process will include consideration of the relevant PANs.

**Table 3.3: Summary of PANs** 

1.	Environmental topic	2.	Relevant PANs
3.	Landscape and Visual	4.	PAN60: Natural Heritage
5.	Ecology; Ornithology	6.	PAN60: Natural Heritage
7.	Noise	8.	PAN 1/2011: Planning and Noise
9.	Air quality	10.	No specific PAN
11.	Cultural Heritage	12.	PAN 2/2011: Planning and Archaeology
13.	Geology, Hydrology, Soil and Flood Risk	14.	PAN61: Sustainable Urban Drainage Systems; PAN79: Water and Drainage; Flood Risk: Planning Advice
15.	Traffic and Transport	16.	PAN75: Planning for Transport

- Land Use, Tourism and
   No specific PAN
   Recreation
- 29. In addition to the topic specific PANs referenced in Table 3.3, PAN 1/2013: Environmental Impact Assessment (Scottish Government, 2013 and updated in 2017) is relevant to the planning application.

#### 3.3.3 Historic Environment Policy Statement

30. The Historic Environment Policy Statement (HEPS) (2019) policy statement set out the policies for when decisions affect the historic environment and sets out how the historic environment should be managed. The Proposed Development is in an area where there are Scheduled Monuments, Listed Building and a Conservation Area. Therefore, appropriate consideration will be given to HEPS where the historic environment may be affected. Effects on cultural heritage in terms of architecture and archaeology are discussed in Volume 1, Chapter 10.

#### 3.3.4 UK and Scottish Energy Policy

- 31. UK and Scottish energy policy and legislative considerations are outlined below and will be considered fully within the Planning Statement.
  - The Climate Change (Scotland) Act 2009;
  - The Climate Change (Emissions Reduction Targets) (Scotland) Act 2019;
  - Climate Emergency National & Local;
  - 2020 Routemap for Renewable Energy in Scotland;
  - The Scottish Energy Strategy: The Future of Energy in Scotland;
  - · Electricity Generation Policy Statement 2013;
  - The Offshore Wind Energy Policy Statement (OWEPS) (Scottish Government, 2020c);
  - Offshore Wind Sector Deal 2019;
  - Low Carbon Scotland: Climate Change Plan Third Report on Proposals and Policies 2018-2032;
  - Protecting Scotland's Future: The Scottish Government's Programme for Scotland 2019-20;
  - Reducing emissions in Scotland 2020 Progress Report to Scottish Parliament;
  - Update to the CCP Securing a Green Recovery on a Path to Net Zero;
  - Scottish National Marine Plan (2015);
  - The Marine (Scotland) Act 2010 and the Regional Marine Plan;
  - Sectoral Marine Plan for Offshore Wind Energy;
  - The Climate Change Act 2008;
  - The Energy Act 2013;
  - UK Offshore Wind Sector Deal; and
  - UK Marine Policy Statement.

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